Sabaee bin Bujang v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO Q–05–46 OF 1999

ABDUL KADIR SULAIMAN, ABDUL AZIZ MOHAMAD AND HASHIM YUSOFF JJCA

29 NOVEMBER 2005

Criminal Law — Penal Code — s 302 — Murder — Conviction for — Whether prosecution's case proved beyond reasonable doubt — Whether accused had raised any reasonable doubt

Evidence — Statement — Cautioned statement — Voluntariness — Whether a question of fact

The appellant was convicted for murder and sentenced to death by the High Court at first instance. He appealed to the Court of Appeal, arguing, inter alia: (i) that the judge had erred in holding that a cautioned statement by the appellant was made voluntarily; (ii) the High Court had erred in admitting exhibits P2 — a counterfoil of a pawn receipt and P3 — a gold necklace belonging to the victim and; (iii) the evidence of PW2 — the pawn shop proprietor that the appellant had pawned the gold necklace was not corroborated by PW3 — his employee.

Held, dismissing the appeal:

(1) The question of voluntariness or otherwise of any cautioned statement is a question of fact. In the instant case, the High Court was right in holding that the said cautioned statement of the appellant was made voluntarily (see paras 5–6); *Dato Mokhtar bin Hashim & Anor v Public Prosecutor* [1983] 2 MLJ 232 followed.

(2) P2 was the pawn receipt counterfoil which showed that: (i) the necklace weighing 33g was pawned on 21 October 1992 for RM500; (ii) the necklace was pawned by the appellant as his identity card number was recorded on P2. P3 was also clearly identified as a gold necklace belonging to the deceased victim. PW2 and PW3 had also given clear evidence regarding these matters. The trial judge was therefore correct in admitting the exhibits and accepting the evidence of PW2 and PW3 (see para 7).

(3) Regarding the requirement for corroboration from PW3 — this was not a case where corroboration was required as a matter of law and practice. The evidence of PW2 was also not inherently incredible. The evidence of PW3 did not also in any way weaken the evidence tendered by PW2 (see para 8).

(4) Upon an analysis of the evidence, the Court of Appeal was satisfied that the High Court judge was correct in accepting the evidence s placed before him at the trial. The prosecution had proved the case against the appellant beyond reasonable doubt. The appellant had not raised any reasonable doubt against the prosecution's case (see paras 9–10).

[Bahasa Malaysia summary

Perayu telah disabitkan kerana membunuh dan dijatuhkan hukuman mati oleh Mahkamah Tinggi pada mulanya. Beliau telah merayu ke Mahkamah Rayuan, dengan berhujah, antara lain:: (i) bahawa hakim telah terkhilaf semasa memutuskan bahawa penyataan beramaran oleh perayu telah dibuat secara sukarela; (ii) Mahkamah Tinggi telah terkhilaf dalam menerima ekshibit-ekshibit P2 — sekeping kaunterfoil resit barang gadai dan P3 — rantai emas milik mangsa dan (iii) keterangan PW2 — tuanpunya kedai barang gadai bahawa perayu telah menggadai rantai emas itu tidak disokong oleh PW3 — majikan beliau.]

Diputuskan, menolak rayuan tersebut:

(1) Persoalan berhubung kesukarelaan atau sebaliknya untuk apa-apa penyataan beramaran adalah satu persoalan fakta. Dalam kes semasa, Mahkamah Tinggi adalah betul apabila memutuskan bahawa penyataan beramaran perayu telah dibuat secara sukarela (lihat perenggan 5–6); *Dato Mokhtar bin Hashim & Anor v Public Prosecutor* [1983] 2 MLJ 232 diikut.

(2) P2 merupakan kaunterfoil resit barang gadai menunjukkan bahawa: (i) rantai itu yang beratnya 33g telah digadai pada 21 Oktober 1992 untuk RM500; (ii) rantai tersebut telah digadaikan oleh perayu kerana nombor kad pengenalannya telah direkodkan pada P2. P3 juga dengan jelas telah mengenalpasti rantai emas milik mangsa si mati. PW2 dan PW3 juga telah memberikan keterangan jelas berhubung perkara-perkara tersebut. Hakim perbicaraan oleh demikian adalah betul dalam menerima ekshibit-ekshibit tersebut dan menerima keterangan PW2 dan PW3 (lihat perenggan 7).

(3) Berhubung keperluan untuk sokongan dari PW3 — ini bukan kes di mana sokongan diperlukan dari segi undang-undang dan amalan. Keterangan PW2 juga tidaklah hebat mana. Keterangan PW3 juga tidak dalam apa cara sekalipun melemahkan keterangan yang ditenderkan oleh PW2 (lihat perenggan 8).

(4) Setelah menganalisa keterangan, Mahkamah Rayuan berpuas hati bahawa hakim Mahkamah Tinggi adalah betul dalam menerima keterangan yang dikemukakan di hadapan beliau semasa perbicaraan. Pihak pendakwa telah membuktikan kes terhadap perayu melampaui keraguan munasabah. Perayu tidak menimbulkan apa-apa keraguan munasabah terhadap kes pihak pendakwa (lihat perenggan 9–10).

Notes

For cases on cautioned statement, see 7(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 2273–2285.

For cases on s 302 of the Penal Code, see 4 *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1424–1477.

Cases referred to

Dato Mokhtar bin Hashim & Anor v PP [1983] 2 MLJ 232 (folld)

Legislation referred to

Penal Code s 302

Foster Nicol Bangau (Bangau & Co) for the appellant.
Kamaruzaman bin Abd Jalil (Attorney General's Chambers) for the respondent.

Abdul Kadir Sulaiman JCA (delivering judgment of the court):

[1] This was an appeal against both conviction and sentence imposed by the learned High Court judge against the appellant for an offence of murder under s 302 of the Penal Code. The trial before the learned judge was with the aid of assessors as provided in the law applicable to Sarawak before the provisions were repealed.

[2] We heard the appeal on 25 January 2005. By a unanimous decision, we dismissed the appeal and affirmed the conviction and sentence imposed by the learned Judge upon the appellant. We now provide our reasons for the decision we made.

[3] The prosecution in this case made use of the appellant's cautioned statement, exh P 23, to implicate him with the murder of one Fazlyanty bte Affandy which allegedly took place on 21 October 1992, at about 6.15am at Sg Patok Besar, Oya, Dalat, Sibu, Sarawak.

[4] From the evidence found in the record, the learned judge summed up to the assessors for their answer on the issue of the truthfulness and whether any, and if so, what weight and effect to place on the cautioned statement, regard being had to the character of the cautioned statement, the circumstances leading to its making and the circumstances in which it was made. Over and above this, so as to satisfy themselves of its truthfulness, they were asked to look for corroborative evidence. From the answers they gave to the learned judge, they believed and accepted the cautioned statement to be true. In other words, the cautioned statement must have been voluntarily made by the appellant and is admissible evidence against the appellant.

[5] The question of voluntariness or otherwise of any cautioned statement is a question of fact. As stated in *Dato Mokhtar bin Hashim & Anor v Public Prosecutor* [1983] 2 MLJ 232 at p 249:

It is difficult to draw clear guidelines on what the court should do in all cases where a question arises as to the voluntariness of a statement of an accused person. Facts differ from case to case. In the ultimate analysis each case has to be determined on its own merits. It has been accepted as sound principle that even where circumstances have been shown by the defence which opened a statement to serious criticism and thereby bringing its voluntariness gravely into question the court could still hold that a statement is voluntary if after appreciating the importance and significance of those circumstances the court can find that there are other facts and circumstances to completely assure the voluntariness of the statement.

[6] Thus on the facts of this case, we were satisfied that the learned judge was right in holding that the said cautioned statement of the appellant was made voluntarily and therefore, the appeal on this ground failed.

[7] Next is the issue of the discovery of various exhibits arising out of the information give by the appellant to the police. On 30 October 1992 the appellant led the police to Poh Lai Pawnshop, Sibu, where the police recovered from PW2, the proprietor of the pawnshop, exh P3, a gold necklace, together with a counterfoil of a pawn receipt marked as exh P2. The gold necklace was later identified to be the one belonging to the victim. According to the evidence of the proprietor and his employee, PW3, on 21 October 1992, the appellant came to the shop to pawn P3 which they valued at RM500. PW3 in the presence of PW2 wrote on a pawn receipt and the counterfoil P2, the particulars and handed the receipt to the appellant. According to PW2, exh P2 is only a simple form kept by the shop in relation to the item pawned and the receipt issued. On exh P2 the following information was written on it by PW3. Against 'Bangsa' it was written BL. The alphabet 'B' stands for 'Malay' because, according to PW2, it is more appropriate and close to the Foochow accent, and the alphabet 'L' stands for 'Male'. 'Nama Barang' was written in Chinese character which signifies 'necklace one'. Against 'Jenis Barang' was written the figure '33' representing the weight of the item pawned in gramme. Against 'Tarikh Pajak' was the date item pawned which in this case was written as '21/10' signifying 21 October 1992. The amount borrowed was recorded as $500. Of significance, against 'Tarikh' was written the identity card number of the appellant which was 'K0135094'. All these matters recorded on the counterfoil were fully explained by PW2 and PW3 in their respective evidence. According to the learned judge, he accepted the evidence of PW2 and PW3 and by the unanimous answer given by the assessors, they too accepted the evidence of PW2 and PW3 that it was the appellant who on 21 October 1992 came to the pawnshop to pawn the golden necklace, exh P3. The learned counsel for the appellant, however, submitted that without any clear explanation or confirmation by the court interpreter that the alphabets 'B' and 'L' on exh P2 stood for 'Malay' and 'Male', the exhibit should not have been admitted. We disagreed because PW2 and PW3 gave clear evidence on the matter and that had been their practice in dealing with the business. On the matter of the assessment of the evidence, it was a matter for the learned judge and we saw no avenue to fault the judge on the matter. Therefore, this ground also failed.

[8] As to the identity of the appellant being the person pawning the gold necklace on 21 October 1992, the reliance was on the evidence of PW2, the proprietor of the pawnshop. He testified that on 30 October 1992 the police party brought along to his shop one person who was handcuffed, who looked like a Malay. He then identified the appellant seated in the dock as being this person. He further testified that he had seen this man about 10 days before that date which was on 21 October 1992 at his shop to pawn the gold necklace. He asked the man to produce his identity card and took the gold necklace from him and weighed it. He valued the item at RM500. On the part of PW3, his worker, his evidence was straightforward. When shown exh P2, he testified that the item pawned was a gold necklace. Since it had been a long time he was not sure whether he could identify the necklace. But when exh P3 was shown to him, he replied in the affirmative that it was pawned on 21 October 1992. When asked as to the identity of the person who pawned the necklace, his answer was that since it had been a long time, he could only remember that the person who pawned the item was a Malay. In his honesty, when asked whether he could identify the person, he replied in the negative. A similar reply was give by him when asked whether he could tell of any special marking found on the necklace. He confirmed that at the material time of the pawning PW2 was with him. The learned counsel for the appellant submitted that without any corroboration from PW3 as to the identity of the appellant, the learned judge ought not to have accepted the evidence of PW2 that it was the appellant who pawned exh P3 in his shop on 21 October 1992. Our answer to that was that this is not a case where corroboration was required as a matter of law or practice. If there was one, of course it would further strengthen the evidence for the prosecution. If there was none, then it was a matter of the credibility of the evidence of PW2 and the weight to be attached to it. In this case, both the learned judge and the assessors accepted the evidence of PW2. There was nothing inherently incredible in the evidence so tendered. Further the evidence of PW3 did not in any way weaken the evidence tendered by PW2. PW3 had no interest to serve and gave his evidence in a straightforward fashion without in any way wanting to implicate the appellant. We saw no reason therefore to interfere with the findings of the court below. The particulars of the identity card of the appellant, in particular the number, fixed the appellant as being the person who pawned the necklace of the victim at the pawnshop.

[9] Next, the identification of exh P3, the gold necklace, and exh P6, the wristwatch, worn by the victim at the time of her death which were subsequently recovered by the police, the former in a pawnshop and the latter at the scene of the crime at Kg Bakong, Oya, in the river. Arising out of the investigation into the case, the appellant led the police to the recovery of the exhibits, including the two above mentioned items. Upon an analysis of the evidence, we were satisfied that the learned judge was correct in accepting the evidence so placed before him at the trial.

[10] On the whole of the evidence, we agreed with the learned judge that the prosecution in this case had proved the case against the appellant upon the charge as framed beyond reasonable doubt that the death of the deceased victim was caused by the act or acts of the appellant which act or acts were done with the intention of causing the death of the deceased. The appellant by his defence had not raised any reasonable doubt as to the truth of the prosecution case against him or as to his guilt.

In the circumstance, the appeal was dismissed and the conviction and sentence imposed by the learned judge were affirmed.

Appeal dismissed.

Reported by John Paul Simon